

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 31, 2004

TO: PARTIES OF RECORD IN RULEMAKING 02-01-011

Decision 04-02-024 was mailed on February 19, 2004, without the dissent of Commissioner Wood. Attached herewith is the dissent.

Very truly yours,

/s/ ANGIE K. MINKIN
Angie K. Minkin, Chief
Administrative Law Judge

ANG:mnt

Attachment

Dissent of Commissioner Wood on D.04-02-024

I dissent from D.04-02-024 because this decision represents another piece-meal attempt at diluting the “Standby Principle” and rules adopted in D.02-03-055. Last April, this Commission voted to modify various DA suspension rules because it found that Albertson’s was correct in that the rules as stated had detrimental effects on DA customers. This Commission voted to modify the DA Suspension rules to permit DA customers to relocate or replace existing facilities within a given service territory without losing DA service in the process. Specifically, D.03-04-057 allowed only replacements or relocations of facilities to be eligible for DA treatment, as opposed to any new facilities.

The Alliance for Retail Energy Markets and the Western Power Trading Forum now request that we further modify the DA suspension rules to interpret the rules to permit a DA customer to calculate the net change in DA load from all replacements and relocations in facilities within its utility-specific service territory, rather than on an account-by-account basis which limits the calculation to a direct one-for-one replacement.

My main concern with adopting further modifications to the suspension rules is that without a clear mechanism for ensuring compliance, which this decision does not have, we will lead ourselves into a situation we’ll be unable to control later. There is no reason why we should not have maintained the requirement of D.03-04-057 for an account-by-account or one-for-one feature of the relocation policy as a necessary means of upholding the integrity of the DA suspension rules and standstill principle. As the rules currently exist, there are no unintended consequences, simply undesired outcomes for DA customers and ESPs, namely, that no new accounts may be opened. And this is an explicit outcome approved in the larger context of the Direct Access proceeding. We fail to acknowledge that the intent of D.03-04-057 was to provide for enforcement of the DA suspension rules by preventing the addition of new accounts that are not attributable to a relocation or replacement of an existing facility. Making modifications at this point on a piece-meal basis undermines the efforts undertaken by this Commission to implement the clear directives of the legislature. It would make it impossible to prevent new DA load at a new location to make up for slower business or reduced consumption at other facilities that continue to operate, precisely the concern we wanted to avoid. Simply put, it would erode the standstill principle.

Aside from that, as PG&E and SCE both agree, the existing rules already allow significant flexibility to address the likelihood that the relocation load does not exactly match the relocated load. Further, I would note DA customers and ESPs have been on notice since we first issued the Suspension Rules in March of 2002 that under the

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standstill principle, we would permit assignments and renewals but not add-ons of new load.

For these reasons, I cannot support the further erosion of the DA Suspension rules adopted in this decision.

/s/ CARL WOOD
Carl Wood

San Francisco, California
February 11, 2004